

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

**FILED**

**AUG 04 2014**

Clerk, U.S. District Court  
District Of Montana  
Missoula

BETTE ONSAGER, as Personal  
Representative of the Estate of Jerome  
Onsager, and personally,

Plaintiff,

vs.

FRONTERA PRODUCE LTD., a  
foreign corporation; PRIMUS  
GROUP, INC., a foreign corporation,  
d/b/a "Primus Labs"; WALMART  
STORES, INC., a foreign corporation;  
JOHN DOES 1-10; and COMPANIES  
XYZ,

Defendants.

CV 13-66-BU-DWM-JCL

ORDER

The proposed Findings and Recommendations entered by United States Magistrate Judge Jeremiah C. Lynch regarding Defendant Primus Group, Inc.'s Motion to Dismiss, (Doc. 75), are now before the Court. Defendant Primus Group, Inc. ("Primus") moves to dismiss allegations set forth in the Complaint for failure to state a claim upon which relief may be granted, pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. 26.) Plaintiff opposes the Motion. (Doc. 44.) Judge Lynch entered proposed Findings and Recommendations on the Motion on

July 10, 2014. (Doc. 75.)

“Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court.” 28 U.S.C. § 636(b)(1). Because the statutory objections period states that a party may file objections within a specified time after service of the findings and recommendations, and service of the Findings and Recommendations at issue was made by mail and electronic means, three days are added after the period would otherwise expire. *See* Fed. R. Civ. P. 6(d). Accordingly, written objections to Judge Lynch’s proposed Findings and Recommendations were due July 28, 2014. No party timely filed written objections to the proposed Findings and Recommendations.

Judge Lynch’s proposed Findings and Recommendations are reviewed for clear error. When no party objects, the Court reviews the proposed findings and recommendations of a United States Magistrate Judge for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error is present only if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

The Court reviewed the proposed Findings and Recommendations and finds

them free of error. They will therefore be adopted in-full. Accordingly, Primus' Motion to Dismiss will be granted in-part and denied in-part as set forth in Judge Lynch's written Order dated July 10, 2014.

IT IS ORDERED that the proposed Findings and Recommendations entered by United States Magistrate Judge Jeremiah C. Lynch regarding Defendant Primus Group, Inc.'s Motion to Dismiss, (Doc. 75), are ADOPTED IN-FULL.

IT IS FURTHER ORDERED that Defendant Primus Group Inc.'s Motion to Dismiss is GRANTED IN-PART and DENIED IN-PART, in accordance with the Findings and Recommendations hereby adopted.

DATED this 4<sup>th</sup> day of August, 2014.

A handwritten signature in black ink, appearing to read "DMolloy", written over a horizontal line.

Donald W. Molloy, District Judge  
United States District Court